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## National Council of Insurance Legislators (NCOIL)

### Resolution Regarding the Use of Certain Rating Factors

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*\*Sponsored by Sen. Neil Breslin (NY) & Rep. Matt Lehman (IN), NCOIL President*

*\*To be Discussed and Considered by the NCOIL Special Committee on Race in Insurance Underwriting on July 15, 2021*

**WHEREAS**, the National Council of Insurance Legislators (NCOIL) formed a Special Committee on Race in Insurance Underwriting (the Special Committee) on September 25<sup>th</sup>, 2020; and

**WHEREAS**, the Committee was charged with: taking testimony, discussing, and defining the term “proxy discrimination” – an undefined term that has been used by many when discussing insurance rating, and has even been included in regulatory-related documents; and discussing the wisdom of certain rating factors being used in insurance underwriting, such as criminal history, zip code, and level of education; and

**WHEREAS**, the Special Committee has held five public hearings and meetings over the past seven months to take testimony, discuss and evaluate these issues; and

**WHEREAS**, the Special Committee and the NCOIL Executive Committee have adopted a Model Definition of Proxy Discrimination contained within amendments to the NCOIL P&C Insurance Modernization Model Act; and

**WHEREAS**, the Special Committee has extensively discussed the use of certain rating factors in insurance underwriting; and

**WHEREAS**, NCOIL remains opposed to unfair discrimination in all forms; and

**WHEREAS**, legislatures have on occasion prohibited or restricted certain rating factors, despite being correlative with loss, based upon considerations related to protected class status; and

**WHEREAS**, on other occasions, legislatures have affirmatively acted to allow specific rating factors; and

**WHEREAS**, the decision to prohibit or allow such factors falls within the province of the legislature pursuant to the Constitutions of the various States; and

**WHEREAS**, the Special Committee having heard testimony regarding the wisdom and efficacy and impact of a wide variety of rating factors, and having considered that testimony; and

**NOW, THEREFORE, BE IT RESOLVED** that NCOIL finds that the use of certain rating factors should be prohibited despite being correlative with loss, based upon the negative and adverse effect that the use of these factors have on protected classes; and

**BE IT FURTHER RESOLVED** that NCOIL views as unfairly discriminatory and urges the prohibition of the use of all data in the underwriting of private, non-commercial insurance that is: related to non-pending arrests, charges and indictments that do not result in conviction; related to convictions that do not relate in any way to either fraud or to the risk being evaluated for the insurance being sought (such as arson for property insurance); and

**BE IT FURTHER RESOLVED** that NCOIL views as potentially unfairly discriminatory in its application in the underwriting of private, non-commercial insurance the use of other rating factors, either singly or in combination, but does not view those factors as unfairly discriminatory at this time; and

**BE IT FURTHER RESOLVED** that NCOIL notes that insurance underwriting is an ever-evolving, complex process; and

**BE IT FURTHER RESOLVED** that NCOIL believes the review of underwriting fairness is one that States should conduct on an annual basis; and

**BE IT FURTHER RESOLVED** that NCOIL supports legislation in the states to accomplish that end.

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